United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

ORIGINAL

75-7001/09/15

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 75—7001
75—7009
75—7015

JOHN E. BAKER and GERALDINE S. GEORGE,
Plaintiffs-Appellees,

vs.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, HARRY I. WILSON, SIDNEY SVIRSKY, and JEAN HANNA,
Defendants-Appellants,

MARION P. CROCCO, GEORGE P. DAVIS, JR., JEAN VIRSHUP, LOUIS KUTZNER, JEAN S. MIDDLETON, FREDERICK STEIGERT, MRS. FRANK GRUSKAY, HERBERT HERSHENSON, LEONARD LOHNE, DOUGLAS J. SMITH, FREDERICK ROSS and MARJORIE B. WAHNQUIST,
Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF PLAINTIFFS-APPELLEES

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BRIEF OF PLAINTIFFS-APPELLEES

Statement of the Issues

Does the federal constitutional principle of one person-one vote govern the election of members of the defendant Regional Board of Education?

Statement of the Case

I. Proceedings Below

This is an action seeking application of the one person-one vote principle to the Regional Board of Education of Regional High School District No. 5, which comprises the towns of Bethany, Orange, and Woodbridge, Connecticut. Plaintiffs are residents, electors, and taxpayers residing in the Town of Orange, and seek a declaratory judgment that the present apportionment plan for the Regional Board is unconstitutional, an injunction requiring the Regional Board to amend the plan so as to cure the unconstitutional defect, and additional injunctive relief as to expenditures by the District until the Regional Board is apportioned in accordance with federal constitutional principles.

On May 9, 1974, plaintiffs moved for summary judgment. That motion was heard on June 12, and the court's memorandum of decision was filed on November 22, declaring that the apportionment of the defendant Regional Board was governed by the one person-one vote federal constitutional principle of apportionment, and that the Board accordingly was improperly apportioned. The court deferred ordering injunctive relief until the Connecticut legislature had had an opportunity to consider such problems as might be raised by the declaratory judgment the court did enter. On January 3, 1975, the court (Newman,

J.) made a determination and directed judgment in accordance with Rule 54(b), and judgment in favor of plaintiffs on their claim for a declaratory judgment was entered on January 8, 1975. The matter is now before this court on appeals filed by the Regional Board, District No. 5, and the defendant treasurers and town clerks of Bethany and Woodbridge.

II. Statement of Facts

In 1951 the Connecticut General Assembly adopted Public Act No. 262, An Act Concerning Regional School Districts, to govern the establishment and incidents of regional school districts. The Act was approved on July 10, 1951, and by the terms of Section 28 thereof became effective immediately. This Act, unamended, remained in effect during 1952 and during all parts of 1953 relevant to this case. A copy of 1951 Public Act No. 262 is reproduced in the Addendum hereto for the convenience of the Court.

Pursuant to this statute the Towns of Bethany, Woodbridge and Orange established a temporary regional school planning committee which on October 30, 1952 reported a recommendation that, *inter alia,* a regional school district for the three towns be established to build and administer a high school for grades seven through twelve. Again acting pursuant to 1951 Public Act No. 262, the three towns each held special elections—Woodbridge on November 4, 1952; Orange on December 20, 1952; and Bethany on January 17, 1953—and approved creation of a regional high school district. All of this is more particularly reflected in the minutes of the State Board of Education appended as part of Exhibit C to the affidavit of Orange Superintendent of Schools Brendan J. Tuohy herein (Appendix, pages 24a-26a).

Following the third and last of these statutorily-prescribed elections, a joint meeting of the boards of education of the three towns was held on January 29, 1953, again

pursuant to the procedures prescribed in 1951 Public Act No. 262, to determine the size and apportionment of the board of education to govern the regional high school district. This meeting decided upon a nine member board, with three members to be elected from Bethany, three from Woodbridge, and three from Orange. All of this is more particularly reflected in the minutes of that meeting appended as Exhibit A to the affidavit of Orange Superintendent of Schools Brendan J. Tuohy herein (Appendix, p. 21a). Finally, again pursuant to the provisions of 1951 Public Act No. 262, the State Board of Education approved the establishment of what has ever since been known as Regional High School District No. 5, the first-named defendant herein. All of this is more particularly reflected in the letter dated February 6, 1953 and page 18 of the minutes of the State Board of Education dated February 3, 1953, which are respectively Exhibit B and part of Exhibit C appended to the affidavit of Orange Superintendent of Schools Brendan J. Tuohy herein (Appendix, pages 22a-23a). That school district remains today governed by an elected board of nine members, elected as set forth above.

As disclosed by defendant's "Exhibit 1 to Affidavit of Smith" (Appendix, page 40a), the Town of Orange, with a population of 13,524, represents 54% of the population of the three-town defendant district. As admitted by the defendant District, et al., in their Amended Answer, the average daily membership (ADM) of the defendant District consisted in the 1972-73 school year of an estimated 55.18% from Orange. Pursuant to the requirements of Connecticut General Statutes § 10-51, requiring each town to pay the same percentage of the district's budget as its percentage of the district's ADM, Orange in the school year 1973-74 paid 55% of the expenses of the defendant district.

Thus to summarize:

1. Plaintiffs are residents, taxpayers and electors of the Town of Orange.

2. The Town of Orange has 54% of the population of the defendant district.

3. The Town of Orange represents 55% of the ADM of the defendant district.

4. The Town of Orange pays 55% of the expenses of the defendant district.

5. The Town of Orange only elects 33⅓% of the members of the defendant board.

ARGUMENT

I. Plaintiffs Are The Real Parties In Interest And Are Properly Before This Court.

Before embarking upon the discussion of the heart of the matter before this Court—whether one person-one vote applies to regional school boards—it would be well at the outset to dispose of the host of strawmen defendants have set up on the road to a disposition of the constitutional issue involved. The first of these appears to be that Mr. Baker and Mrs. George—though indisputably residents, electors and taxpayers of the Town of Orange—are not the "real parties in interest", that their participation is an example of "collusion," and that the Town of Orange as a municipal corporation should be *the* plaintiff (or *a* plaintiff—it is not clear what defendants mean) herein. In this exercise, defendants invoke F.R.C.P. 17(a) and 28 U. S. C. § 1359. Looking first at F.R.C.P. 17(a), it states as follows:

> (a) Real Party In Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for

> whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Under this Rule suit must be brought by the "real party in interest." That has been defined as "the party who, by substantive law possesses the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery." *First National Bank of Chicago* v. *Mottola*, 302 F. Supp. 785, 791 (N.D. Ill., E.D.; 1969); affirmed, 465 F. 2d 343 (CA-7; 1972). Who, then, is the real party in interest in the case at bar? Defendants argue it is the Town of Orange. But what interest does a municipal corporation have in ensuring federal electoral rights? The Town, *qua* town, has no right to vote for members of the defendant Board; only electors living in the town have that right. If the Town has no such right to vote, then by all the rules of standing it has no constitutional right which malapportionment infringes; only electors living in the Town do. The Town *qua* town thus has no legally cognizable interest to protect or advance. As such, it cannot be the real party in interest. This is a suit to prevent the infringement of an elector's right to one person-one vote representation on the defendant Board, and the real party in interest is the elector who brings the action. Any elector—or all the electors—of the Town may bring this action. But while the Town may assist its residents in protecting and advancing constitutional rights which belong to each and every elector,

it cannot substitute itself for those electors in a court of law or equity. And if it did, defendants would quite rightly move to dismiss on the ground that the "plaintiff Town" has no standing to invoke the jurisdiction of this Court because *it* had not been deprived of any right to vote for school board members.

It is significant that in the state legislative reapportionment cases brought in the decade and more since *Baker* v. *Carr,* 369 U.S. 186 (1962), the towns from which representation was sought to be withdrawn have not been named or added as parties to the suits. As the Supreme Court stated in its landmark opinion in *Reynolds* v. *Sims,* 377 U.S. 533, 562 (1964):

> Legislators represent people, not trees or acres. Legislators are elected by voters, not farms *or cities* or economic interests. (Emphasis supplied)

Of even greater significance to this Court is that the precise issue raised by defendants was raised—before *Reynolds*—in Connecticut's reapportionment case, *Butterworth* v. *Dempsey,* 229 F. Supp. 754 (D. Conn.; 1964); affirmed *sub nom Pinney* v. *Butterworth,* 378 U. S. 564 (1964). In that case, the towns of Franklin and Salem and their first selectmen sought to intervene, claiming that the rights and interests of these small towns would be affected by any decree in the case, and that there was no party in the case purporting to represent the "small towns." The District Court, in denying that motion, stated that

> The towns are in effect election districts for the purposes of this suit, and have no right to intervene as necessary parties.
>
> *Id.,* at 798-799.

A separate appeal was taken to the Supreme Court and this decision was affirmed. *Town of Franklin, et al.* v. *Butterworth,* 378 U.S. 562 (1964). See also *Kapral* v. *Jepson,*

271 F. Supp. 74, 77n (D. Conn.; 1967). Significantly, the towns in the regional school districts were not parties to the suit in both *Leopold* v. *Young,* 340 F. Supp. 1014 (D. Vt.; 1972) and *Powers* v. *Maine School Administrative District No. 1,* 359 F. Supp. 30 (D. Me. N.D.; 1973).

It should also be noted here that not only Orange but the other two towns did, in fact, have an opportunity to participate fully in this case already, since the town clerk and town treasurer of each of the towns were named as parties defendant and appeared herein by counsel.

If defendants' theory of law be true—that encouragement of and paying the legal expenses for and assisting in the prosecution of a suit makes an entity the "real party in interest" and the named individual plaintiffs merely collusively-made agents, nominees or pawns—then, presumably, defendants will have effectively sounded the death knell for such pioneering organizations as the NAACP Legal Defense Fund, the ACLU, the CCLU, the Lawyers' Committee on Human Rights, Sierra Club, Common Cause—not to mention the two major political parties in reapportionment suits—which, by providing legal and financial assistance and by encouraging individuals to seek judicial redress for infringements of their constitutional rights have brought about some of the landmark decisions in constitutional law in this country. One had thought such an argument had long since been laid to rest. See *NAACP* v. *Button,* 371 U.S. 415 (1963).

With the elimination of defendants' "real party in interest" argument the "collusion" argument falls as well. However, for purposes of completeness we shall address ourselves to defendants' argument that plaintiffs are mere "nominees" or "agents" of the "real party in interest" and therefore under 28 U.S.C. § 1359 the Court lacked jurisdiction of this case. § 1359 states as follows:

> A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise,

> has been improperly or collusively made or joined to invoke the jurisdiction of such court.

We must assume that defendants, in making their "real party in interest" and "collusion" arguments, are not engaging in a disingenuous "set-up" by which they would seek to dismiss for lack of standing any suit brought by the Town as the alleged "real party" (although *plaintiffs* entertain the gravest doubts concerning the Town's standing in this type of suit, and recognize that standing is not a fact that can be stipulated to or waived). Proceeding on the assumption that defendants truly believe the Town could bring the instant suit, we turn to an examination of the meaning and purpose of § 1359.

While the precise purpose of § 1359 is nowhere articulated, a review of the cases construing it and its predecessor, 28 U.S.C. § 80, makes abundantly clear that the intent of the statute was to prevent "manufactured" *diversity* jurisdiction. *Kramer* v. *Caribbean Mills,* 394 U.S. 823, 829-30 (1969); see generally cases collected in Annotation, 75 A.L.R. 2d 717 (1961). No such diversity jurisdiction is claimed in the case at bar; it is based upon federal question jurisdiction under 42 U.S.C. § 1983. The statute is therefore inapposite.

Assuming, *arguendo,* that the statute does apply, we turn to an examination of the key operative words of the statute "improperly or collusively." These words have been construed by the court in *Corabi* v. *Auto Racing, Inc.,* 264 F. 2d 784 (CA-3; 1959). The word "collusion":

> indicates "A secret agreement and cooperation for a fraudulent or deceitful purpose; deceit; fraud." . . . Moreover the word "collusion" generally is employed to indicate an illegal agreement or understanding between *opposing* sides of a litigation rather than to an arrangement effected by one side of the sort at bar.

Id., at 788 (emphasis supplied). The word "improperly" clearly connotes "impropriety". *Ibid.* Certainly, there is no evidence to indicate that *defendants* agreed with the plaintiffs or the Town of Orange that these plaintiffs should bring this suit. And the extensive newspaper publicity, including the paid newspaper announcement made by defendants an exhibit to Mrs. George's deposition (Record No. 21), clearly belies any "secrecy" to the proceedings.

But perhaps defendants are concerned about the possibility of "initiation": whose idea was it first to have a one person-one vote suit brought? Their concern should be allayed by the settled case law on this subject in this circuit:

> To support a charge that the plaintiff has been improperly or collusively made a party to a diversity action, the defendant may be able to show that there are others, lacking the citizenship necessary to jurisdiction, who have an equal or greater interest than the plaintiff in the outcome of the suit brought in his name. It may further appear that such persons sought out the plaintiff to urge him to bring suit in federal court and agreed to indemnify him against all costs and expenses of that litigation. Where the plaintiff himself held an interest in the subject matter of the proposed litigation prior to such solicitation and agreement, and hence would have been entitled at that time to bring his own suit, it has been held that these circumstances, without more, are insufficient to make out collusion. *Wheeler* v. *City & County of Denver*, 229 U.S. 342, 33 S. Ct. 842, 57 L.Ed. 1219 (1913); *Allstate Ins. Co.* v. *Lumbermens Mut. Cas. Co.*, 204 F. Supp. 83 (D. Conn. 1962); *First Congregational Church and Soc. of Burlington, Iowa* v. *Evangelical and Reformed Church*, 160 F. Supp. 651 (S.D.N.Y. 1958).

Ferrara v. *Philadelphia Laboratories, Inc.*, 272 F. Supp. 1000, 1012-1013 (D. Vt.; 1967), affirmed by this Court per

curiam for reasons stated in the trial court's opinion 393 F. 2d 924 (CA-2; 1968). There can be no doubt in the case at bar that plaintiffs Baker and George held their constitutional rights to one person-one vote before any contact from the Town of Orange, and that they would have been entitled to bring this suit without any contact with the Town.

Finally, to allay defendants' last lingering doubts as to the sincerity of plaintiffs' interest in vindication of their constitutional rights, it might be noted that both plaintiffs on deposition testified that they wrote counsel requesting and authorizing this suit to be brought in their names and that both plaintiffs, despite defendants' solicitous probing as to their true desires and intent, affirmed on deposition their long-standing and continuing support of one person-one vote as the principle for election of their regional school board, and have steadfastly remained in the case as the plaintiffs despite defendants' implied invitation that they withdraw.

Thus, there can be no doubt that Mr. Baker and Mrs. George are the real parties in interest, that they are properly before this Court, and that the municipal corporation of Orange would not be a proper party plaintiff in their stead.

II. The Court Below Properly Refrained From Abstention.

Defendants next attack the Court below's assumption of jurisdiction on the theory that plaintiffs had not exhausted their remedies under state law. That "exhaustion of remedies" argument has been conclusively answered by the Supreme Court in *McNeese* v. *Board of Education,* 373 U. S. 668, 671, a case, like the case at bar, arising under 42 U.S.C. § 1983:

> We have previously indicated that relief under the Civil Rights Act may not be defeated because relief was not first sought under state law which provided a remedy.

III. A Three-Judge Court Would Have Been Improper In This Case.

Defendants' next attack states, in substance, that the decision of this action required a statutory three-judge court pursuant to 28 U.S.C. § 2281. Clearly, however, it did not. *That* federal statute requires the convening of a three-judge court *only* where an injunction is sought "restraining the enforcement, operation or execution of any State statute . . . upon the ground of the unconstitutionality of such statute . . ." The statute must also be one of statewide application. *Cf. Moody* v. *Flowers*, 387 U.S. 97, 102 (1967). The case at bar in no way sought to restrain enforcement of any state statute or to have any state statute declared unconstitutional.

The defendants apparently take their cue in raising this argument from the opinion of the District Court in a previous case involving reapportionment of this school board, *Giordano* v. *Amity Regional High School District No. 5*, 313 F. Supp. 403 (D. Conn.; 1970). In that case—which never was decided on the merits and was subsequently withdrawn—then-Chief Judge Timbers, "despite some reservations in my own mind" (*Id.*, p. 408) granted defendants' request to convene a three-judge court. Judge Timbers then discussed at some length in a footnote, *Ibid.*, the "persuasive" argument *against* convening such a court, but noted that counsel in *Giordano* had not advanced that argument. Plaintiffs in the case at bar believe that Judge Timbers' reasoning in that footnote is persuasive that this matter is properly cognizable by a single judge; we adopt that reasoning and advance that argument.

It is significant, too, that in the two most relevant federal decisions on the merits of this case—decisions holding the one person-one vote principle applicable to regional school boards in situations practically on all fours with the case at bar—the federal courts that rendered the decisions were single-judge courts; and in the first of these decisions

the court specifically considered and rejected the argument for a three-judge court advanced by defendants herein. *Leopold* v. *Young*, 340 F. Supp. 1014 (D. Vt.; 1972, by Circuit Judge Oakes, sitting by designation as a District Judge); *Powers* v. *Maine School Administrative District No. 1*, 359 F. Supp. 30 (D. Me., N.D.; 1973, by Gignoux, J.).

Defendants then seek to invoke two special acts as their wedges for entering a three-judge court—1953 Special Act No. 142 and Special Act No. 74-69 (1974). The former of these states as follows:

> The action of the towns of Bethany, Woodbridge and Orange in establishing a regional school district under the provisions of sections 297b to 319b of the 1951 supplement to the general statutes is hereby confirmed, ratified and validated irrespective of any failure of said towns to follow the precise procedural requirement of said sections, and the regional school district number 5 of the towns of Bethany, Woodbridge and Orange is declared to be a duly constituted regional school district with all the powers and privileges given to such districts by the provisions of said sections.

It will immediately be noted (1) that this is a special act, not one of statewide application (2) that it is no more than a validating act, validating the actions of the three towns in creating the district and (3) plaintiffs had no need to, and therefore did not seek to, enjoin its enforcement. Thus, no three-judge court need be convened.

No. 74-69 is also a special act, and not one of statewide application; but to it defendants have attached a talismanic quality of fixing immutably the apportionment of the Amity board at 3-3-3. It is an attribute, an effect, belied both by its legislative history and by the implied admission of counsel for other defendants in his interrogation during the Baker deposition.

In the Addendum to this brief there are reproduced three documents: (1) Special Act No. 74-69; (2) File No. 401, constituting the bill before the 1974 General Assembly which became upon passage Special Act No. 74-69; and (3) Raised Committee Bill No. 5758, the genesis of Special Act No. 74-69. A review of the legislative history of this bill discloses that it received no committee hearing and, because it was placed on the consent calendars of both houses of the General Assembly, no debate or discussion. We are thus left to a consideration of the statement of purpose of the bill to determine the legislative intent. *Harris* v. *Planning Commission,* 151 Conn. 95, 100 (1963).

The statement of purpose of Bill No. 5758—the only known data which the legislators had concerning this bill—was as follows:

> To provide for a uniform date for members of regional high school district number five to take office.

Nothing in the statute purports to fix or to affect the apportionment of the defendant Board. The statute itself merely reflects what in fact was the historical fact—that each town elected three members for terms of three years and that each town elected one member each year. The statute, thus, did not create an apportionment or "fix" an apportionment, nor did it purport to do so. Neither did the statute refer to General Statutes § 10-47c, reposing exclusive power to amend an apportionment plan in either the defendant Board or the legislative body of a constituent town as initiators and in the electors of the district for approval or rejection, nor did it purport to be in derogation of this general statutory power. All the special act has done is to recognize and articulate the existing background of apportionment—three from each town, with one elected for a three-year term each year from each town—against which the uniform date for assuming office was being enacted. Thus, if the apportion-

ment of the defendant Board is changed, this special act may be rendered moot. Indeed, defendants undercut their own argument as to the conclusiveness of this special act by urging this Court on page 27 of their brief to require plaintiffs first to proceed with amendment attempts under § 10-47c.

The purpose and effect—and the only purpose and effect—of Special Act No. 74-69 is even more clearly articulated by counsel for the defendants Wilson and Hanna, the Woodbridge officials, during examination of the plaintiff Baker on the deposition defendants have filed with this Court (Record No. 21). On pages 16 and 17 of that deposition there appears the following dialogue:

> By Mr. Cousins:
>
> Q. You are aware, I take it, that there have been two pieces of legislation affecting the district during this session of the legislature? One was a special act that eliminated the problem of having Woodbridge members elected at their town meeting, three days I think short of the time when they ought to qualify, so they passed a special act which cured that?
>
> A. Right.

Thus, the statement of purpose is confirmed and, indeed, amplified by counsel's illuminating question: it was to "cure" a problem with respect to the date Woodbridge's board members were elected.

This bit of legislative history aside, plaintiffs would also note that they did not purport to seek an injunction against Special Act No. 74-69 in this proceeding even if it did constitute a legislative "fixing" as defendants allege. The 1974 elections had already been held when this matter was argued, and the occasion for enforcing this statute so that an injunction would be appropriate was not upon them at that time; and accordingly, an injunction would not have been necessary in order for the Court effectively to afford plaintiffs the relief they sought.

IV. Summary Judgment Was Appropriate.

Defendants' final roadblock on the path to the real issue is their argument that summary judgment was not appropriate. Yet the only support for their argument they quote is an *opinion* by the District Superintendent that the district meeting effectively governs the district, leaving the Board "to administer those programs and activities" (Benedict-Svirsky brief, pages 5-6). Putting aside the fact that this is a gratuitous opinion only and that it ignores the fact that "one person-one vote" is not limited by the labels of "legislative" or "administrative", the argument ignores the fact that the Court below had before it in undisputed form all of the facts necessary for a decision, to wit:

1. That plaintiffs were residents, electors and taxpayers of the Town of Orange.

2. That Orange had 54% of the district's population, had 55% of the district's school children, paid 55% of the district's expenses, yet elected only 33⅓% of the district board's members.

3. The powers, duties, status, and method of operation and election of the board were all prescribed by state statutes (all of which are more fully discussed in the next section).

There was, in short, no genuine issue as to any *material* fact to prevent the Court from granting summary judgment. Indeed, that is the traditional method of deciding reapportionment cases. See, e.g., *Butterworth* v. *Dempsey,* 229 F. Supp. 754 (D. Conn.; 1964—motion for partial summary judgment); *Hadley* v. *Junior College District,* 432 S.W. 2d 328, 331 (1968—motion to dismiss); *Leopold* v. *Young,* 340 F. Supp. 1014 (D. Vt.; 1972—motion for summary judgment); see also *LoFrisco* v. *Schaffer,* 341 F. Supp. 743 (D. Conn.; 1972—motion to dismiss). And there is no indication that there was any evidentiary hearing in

Powers v. *Maine School Administrative District No. 1*, 359 F. Supp. 30 (D. Me., N.D.; 1973).

Having, therefore, disposed of all the arguments against meeting and deciding the constitutional issue involved, we address ourselves at last to that issue.

V. One Person-One Vote Applies To Regional Boards of Education.

A. The Powers of The Board

A necessary preliminary to discussing whether one person-one vote applies to the election of members to the defendant Board is an examination of the nature and powers of regional boards of education, of which the defendant Board is one, under Connecticut law; for it is the powers the Board *has, not* those it *lacks*, which are of crucial importance.

Regional school districts are authorized, their creation governed, their powers, duties and responsibilities prescribed, and their incidents set forth exclusively in the Connecticut General Statutes in what is now Chapter 164, §§ 10-39 through 10-63i (See Addendum to defendants' brief). A regional school district is a body politic and corporate. § 10-56. It is a quasi-municipal corporation. *Regional High School District No. 3* v. *Town of Newtown*, 134 Conn. 613, 620 (1948). Its powers include the power "to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools." § 10-56. The district may also issue bonds upon the full faith and credit of the district and its member towns, in the manner and for the purposes prescribed by state statute. § 10-56.

This quasi-municipal body politic and corporate is governed by a regional board of education, which by statute is elective and which, also by statute, has "all the powers

and duties conferred upon boards of education by the general statutes . . ." § 10-47. Like a town board of education, a regional board of education is an agency of the state. *Regional High School District No. 3* v. *Town of Newtown, supra,* at 617. Some of these powers are set forth in § 10-47 itself, which states as follows:

> Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and personal property for the purposes of the regional school districts. The regional school district annual meeting shall be the district meeting at which the annual budget is first presented for adoption and shall be held the first Monday or the first Tuesday in May. The boards may convene special district meetings when they deem it necessary. District meetings shall be warned and conducted in the same manner as are town meetings. For such purposes, the chairman of the board shall have the duties of the board of selectmen and the secretary shall have the duties of the town clerk.

In the Addendum to this brief, we have provided a summary listing of the more significant powers of boards of education which, under § 10-47, a regional board of education would possess.

Turning to the area of finance, the powers of the regional board are awesome, partaking of powers which in

municipalities are divided among several boards. The district, acting through its regional board of education, may issue bonds after approval by referendum, just as municipal legislative bodies do. The board may authorize bond anticipation notes for periods of up to four years, pursuant to § 10-56(c), and is permitted to treat the proceeds of these bonds or notes "in the same manner and to the same extent as permitted school districts or municipalities in chapter 112." § 10-56(d). Pursuant to the provisions of § 10-60, the board may also borrow money for periods of up to five years in addition to its power to issue bonds.

What is of particular significance in this catalogue of the board's bonding powers is the centrality of the board in this process. For while—as is the case in all Connecticut towns, whether for educational or other governmental purposes—the bond ordinances themselves must be *approved* by the voters of the district in a referendum, *whether* to propose a bond ordinance, for what *purpose*, *when*, for *how much*, and in what *form* are all within the sole and exclusive jurisdiction of the regional board. The voters may ratify or disapprove; but *what* they ratify or disapprove is whatever the board decides to present to them.

In its budget-making powers, the board combines within itself all of the powers which in other towns are divided among the board of education, the board of selectmen, and the board of finance (see, e.g., §§ 10-222 and 7-344). Under § 10-51 it and it alone drafts and presents to the annual district meeting the budget for the next fiscal year. In districts of four towns or more the board may decide the method of voting at the annual meeting. If the meeting rejects the budget, the board alone redrafts and re-presents the budget for another vote. And when its budget is finally approved, it is the board which fixes the assessment each member town must pay. Payment of this sum may be compelled by judicial process, § 10-51a. In addition, the board is empowered to submit a supplementary budget if necessary, § 10-50a.

Here, too, the significance of these powers must not be permitted to pass without comment, for defendants make much in their brief of the budget-making process, and appear to be attempting thereby to deprecate the power of the Board. To the contrary, however, what clearly emerges from defendants' own discussion and trial court affidavits is the very real power of the board. What becomes readily apparent from defendants' own extended discussion is the total control by the board over the *content* of whatever budget the district meeting receives for its consideration. The board alone has the exclusive power to initiate and to propose. Unlike legislative bodies or town meetings, the district meeting has only one power: to vote up or down whatever budget the board chooses to present to it, without amendment. If it chooses not to ratify a budget as presented, it sends it back to the board; and it is the board and the board alone which decides *whether* to amend the budget and *how* to amend it. The district meeting, then, has nothing more than a veto power.

And as far as the district meeting's authority with respect to collective bargaining agreements is concerned, here again the agreement is negotiated by the board; and the only opportunity a district meeting will have to pass upon it arises *if* the chief executive officer of a constituent town requests that a meeting be called. (General Statutes § 10-153d).

Thus, the regional school board exercises the general management and control of all schools within its district. It employs and dismisses teachers in those schools. It makes contracts. It collects fees. It acquires property, builds and operates schools. It supervises and disciplines students. It alone drafts its own budget for consideration, unfettered by any other boards; and after the budget has been adopted, it and it alone assesses the mandatory contributions of the constituent towns.

B. Relevant Case Law

With this review of the nature and powers of the defendant Board, as a regional board of education, clearly in mind, we turn to an examination of the relevant case law. We believe it is clear beyond peradventure that the applicability of the principle of one person-one vote to this board is compelled by the decision of the United States Supreme Court in *Hadley* v. *Junior College District of Metropolitan Kansas City,* 397 U.S. 50 (1970). There the Supreme Court held as follows (at page 56):

> We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis which will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

The Court also expressly rejected any artificial distinction between elections for "legislative" officials and those for "administrative" officers. It stated (again at page 56):

> Education has traditionally been a vital governmental function, and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term.

A review of the powers and duties of a regional board of education discloses its decisive impact on the people of the district, and clearly brings it within the intendment of the Supreme Court in *Hadley* that the board members

> perform important governmental functions within the districts and . . . these powers are general enough and

> have sufficient impact throughout the district to justify the conclusion that [one man-one vote] should be applied here.

Id., at 53-54.

While *Hadley* has served as the touchstone for all post-1970 decisions on application of one person-one vote to boards of education, the clear trend of the courts had been in that direction well before *Hadley*. In such cases as *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Pa.; 1965); *Strickland* v. *Burns*, 256 F. Supp. 824 (M.D. Tenn.; 1966); *Meyer* v. *Campbell*, 152 N.W. 2d 617 (Iowa; 1967); followed in 1971 in *Stanley* v. *Southwestern Community College Merged Area*, 184 N.W. 2d 29; *Oliver* v. *Board of Education of the City of New York*, 306 F. Supp. 1286 (S.D.N.Y.; 1969); and *Freeman* v. *Dies*, 307 F. Supp. 1028 (N.D. Tex.; 1969), both federal and state courts found the principle applicable both to city and to county-wide boards of education.

After *Hadley* was decided on February 25, 1970, the lower courts kept rapid pace. The one person-one vote principle was found constitutionally required for the elective school boards in *Fahey* v. *Laxalt*, 313 F. Supp. 417 (D. Nev.; 1970); *Adams* v. *School Board of Wyoming Valley West School District*, 332 F. Supp. 982 (M.D. Pa.; 1970); *Mayes* v. *Teague*, 341 F. Supp. 254 (E.D. Tenn. N.D.; 1972); *Chargoris* v. *Vermilion Parish School Board*, 348 F. Supp. 498 (W.D. La.; 1972); and *Panior* v. *Iberville Parish School Board*, 498 F. 2d 1232 (CA-5; 1974).

Nothing in the most recent Supreme Court apportionment decisions, *Salyer Land Co.* v. *Tulare Water District*, 410 U.S. 719 (1973), and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973), in any way diminishes the force of those decisions or erodes the applicability of *Hadley* to school boards such as those involved here; indeed the Court in *Salyer* expressly mentioned *Hadley*, and distinguished the "special limited

purpose" district having a "disproportionate effect of its activities on landowners as a group" from the ambit of *Hadley's* holding. *Id.* And defendants can find no comfort in *Gaffney* v. *Cummings,* 412 U.S. 735 (1973), or *Mahan* v. *Howell,* 410 U.S. 315 (1973), either; for both of those cases were based upon the acknowledged applicability of one person-one vote, and dealt only with permissible ranges of population deviation under that principle.

Indeed, it may be that the arguments of *Hadley* have even greater force in the case at bar than they did for Missouri's junior college districts. For as the Court stated in *Dameron* v. *Tangipahoa Parish Police Jury,* 315 F. Supp. 137, 138 (E.D. La.; 1970), in applying one person-one vote to the parish school board:

> The only differences between the present case and the one presented in *Hadley* make this an even stronger case for reapportionment. The immediate importance to the individual voter of having equal representation on the board that runs the basic public school system of the Parish is much more obvious than his concern with the governance of the local junior college. The elected local school board traditionally exercises governmental authority over matters of utmost significance to all the people within its jurisdiction. It does not represent an experimental means of handling newly instituted state administrative matters, as the dissent in *Hadley* characterized the Missouri junior college districts.

This Court itself has recently recognized that boards of education, both district and county, must if elective be apportioned on the basis of one person-one vote. *Rosenthal* v. *Board of Education of Central High School District No. 3,* 497 F. 2d 726, 729 (CA-2; 1974). And while the Connecticut courts have not specifically passed upon the one person-one vote question as it applies to school boards, our federal court has, at least tangentially, held that principle ap-

plicable in its opinion in *LoFrisco* v. *Schaffer,* 341 F. Supp. 743, 747 (D. Conn.; 1972), affirmed, 409 U.S. 972 (1972). That case, dealing with the minority representation statute in the context of the Wilton board of education election, did not present for decision the one person-one vote issue. However, the court freely discussed *Hadley* at page 747, and concluded

> The Fourteenth Amendment one man-one vote principle clearly applies here.

All of these cases point the way clearly and unmistakably to a finding that one person-one vote applies to regional school boards in Connecticut and, more especially, to the defendant Board. Of even greater import, however, is the fact that in two recent New England federal cases dealing with regional school boards strikingly similar to the defendant Board and the other Connecticut regional school boards, the courts have held precisely that.

Leopold v. *Young,* 340 F. Supp. 1014 (D. Vt.; 1972) involved apportionment of the school board of a four-town voluntarily-established high school district with population disparities ranging from 16.9% to 35.5%, but with each town having three members on the twelve-member elected school board. Like the situation in the case at bar, formation of the district under Vermont law required the approval of the voters of each constituent town. Like the situation in Connecticut, the apportionment of school board members had to be agreed upon by the constituent towns.[1]

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[1] Under the 1951 statutes the apportionment in Connecticut was determined by majority vote of a joint meeting of the constituent towns' school boards after the district had been established. 1951 Public Act No. 262, § 9. Under existing Connecticut law, board apportionment is one of the matters comprising the report of the temporary regional school study committee, and is voted upon by the proposed constituent towns as part of the referendum item as to establishment of the district. General Statutes § 10-43.

The court held in *Leopold* that one person-one vote applies to the election of the regional high school board, a decision that it felt flowed ineluctably from the Supreme Court's decision in *Hadley, supra.* And it was of no moment to the court in *Leopold*—as it should be of no moment to this Court—that the district was established voluntarily by the towns. For as the Supreme Court held in *Lucas* v. *Forty-fourth General Assembly of Colorado,* 377 U.S. 713, 736-737 (1964):

> An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. As stated by this Court in West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 [63 S. Ct. 1178, 1185, 87 L.Ed. 1628], "One's right to life, liberty, property . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause . . .

In reaching its decision, the Court in *Leopold* reasoned persuasively as follows:

> Since school boards of union school districts perform governmental functions and since those Shelburne and Williston residents who desire full representation on

the District school board cannot be deprived of their right to an equal voice in the operation of the District, there can be no constitutionally permissible justification for the malapportionment of the Champlain Valley Union High School District. It may be true that equal representation of the four towns constituting the District induced the smaller towns to participate in the District in the first instance, and may serve some useful purposes. Nevertheless, the Supreme Court cases require that legitimate town interests be safeguarded in some way other than impingment on constitutionally protected rights by way of gross malapportionment. Moreover, these legitimate interests may to some extent be reflected when the "one man-one vote" principle is applied in particular cases, since the Supreme Court has only recently taken the view "that the particular circumstances and need of a local community as a whole may sometimes justify departures from strict equality." Abate v. Mundt, 403 U.S. 182, 185, 91 S. Ct. 1904, 1907, 29 L.Ed. 2d 399 (1971). Here, however, there should be little problem since the proportions involved bear such a clear ratio to one another.

A similar situation prevailed in *Powers* v. *Maine School Administrative District No. 1,* 359 F. Supp. 30 (D. Me. N.D.; 1973). This case involved apportionment of the school board of a five-town voluntarily-established school district. In *Powers* the total population of the district was 14,414; the population of the largest constituent town was 11,452; the school board consisted of 17 members; and the largest town was entitled to only 9 members. Here again, Maine law required the approval of the voters of each constituent town for establishment of the district, including the apportionment on the regional board (in Maine, called the "board of directors"). The Court, again citing *Lucas,* rejected the contention that the voluntary

creation of the district exempted its apportionment from the requirements of one person-one vote, and held that one person-one vote applied.

C. The Board Is Elective

Defendants, in a final attempt to prevent application of the principle of one person-one vote to this board, attempt to persuade this Court that the board is not elective in the sense the Supreme Court intended for application of the one person-one vote principle. This, defendants press despite the command of General Statutes § 10-46 that they be elective.

In point of fact, the defendant board is fully as elective —and by the same electors—as is the board of selectmen, the Governor, the United States Senators and the President of the United States. While the forum in which the election takes place may be the town meeting of the three towns, and those three towns may have a selectman-town meeting form of government, the persons there assembled are not sitting as the "legislative body" of the town (as the defendant Woodbridge officials would have one believe), but as a body of electors conducting an election. As General Statutes § 7-6 (reproduced in the Addendum to the defendant Board's brief) recognizes, regular and special town elections are also "town meetings" under the statutes; and § 7-6 is part of Chapter 90 of the General Statutes, which forms the basis of one of the two alternative methods of electing board members under § 10-46(b).

If defendants seek to exalt form over substance to limit "popular elections" to a "voting machine election" only, there are two answers to that. First, defendants can find no case so artificially limiting the definition of a "one person-one vote" election to the use of voting machines. And second, General Statutes § 7-7 specifically provides for 8 or 14 hour "voting machine elections" for "town meetings" upon petition. Thus, the electors of Orange, Woodbridge and Bethany may if they choose go to the polls from

6 A.M. to 8 P.M. to vote for their regional board members, just as they do for the President, the Governor, the General Assembly, or any other elective officer. Indeed, while the defendant Woodbridge officials quote extensively in their brief from their town charter, they omit to mention that in the index to that charter the regional board of education is listed as an "elective" office.

Cutting finally to the heart of the matter as the Court below did (Appendix, pages 65a-66a, n. 6), the simple fact of the matter is that in the elections held in Orange, in Bethany and in Woodbridge for regional board of education members "any person who is an elector" of that town is eligible to vote, just as he or she is eligible to vote in any other election, General Statutes § 7-6. If this is not a situation where, in Mr. Justice Black's phrase in *Hadley,* there has been a "decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions", then, we submit, it would be next to impossible to conceive of such an instance. The board is elective. (It may be noted parenthetically that defendants in *Scott* v. *Nonnewaug Regional School District,* No. 75-7039, the companion to this case, make no attempt to claim that *their* board under Connecticut law is anything but elective.)

Conclusion

For all of the reasons hereinabove set forth the conclusion must be inescapable that the defendant Regional School Board is precisely that sort of central governing and controlling public Board—whether denominated "legislative," "executive," or "administrative"—to which the Supreme Court intended that the electoral principle of one person-one vote apply; that the board, both by compulsion of state statute and in actual practice, is *elective,* not appointive, because those who vote for its members are

all the electors in each of the constituent towns; that therefore the defendant Regional Board must be apportioned on the basis of one person-one vote; and that it now is not so apportioned constitutes a deprivation of plaintiffs' constitutional rights.

The judgment below should be affirmed.

Respectfully submitted,

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ADDENDUM

1951 PUBLIC ACT NO. 262

PUBLIC ACT NO. 262

AN ACT CONCERNING REGIONAL SCHOOL DISTRICTS.

SECTION 1. When used in this act, the terms "legislative body" and "budget-making authority" shall have the meanings ascribed to them in section 811 of the general statutes.

SEC. 2. Any two or more towns may, by vote of their legislative bodies, join in the establishment of a temporary regional school planning committee, hereafter referred to as the committee, to study the advisability of establishing a regional school district, and to estimate the cost of providing necessary land and school building facilities therefor and to make recommendations to their respective towns.

SEC. 3. Each town joining in the establishment of such a committee shall be represented on such committee by four members, said members to be elected in a town meeting duly called for the purpose.

SEC. 4. The members of the committee established under the provisions of section 2 of this act shall elect from among their number a chairman, a secretary, a treasurer who shall be bonded and such other officers as the committee shall determine. Meetings of such committee shall be held at the call of the chairman or at such times as said committee may determine. The treasurer shall receive all funds and monies of the committee, shall pay out the same upon the order of the committee within the limits of such receipts, and shall keep detailed accounts thereof. The committee shall keep minutes of all its proceedings and official actions, which minutes shall be a public record.

SEC. 5. Any committee established under the provisions of section 2 of this act is authorized to receive for its own use and purposes any funds and monies from any source, including bequests, gifts or contributions, made by any individual, corporation or association. Each town joining in the

establishment of such committee shall pay its proportionate share of the expenses in an amount which shall be computed by determining the percentage relationship between the number of pupils of the town in grades 7 through 12 attending public school at the expense of the town for the school year next prior to that in which the committee is established and the total number of such pupils from all of the towns joining in the establishment of the committee and applying the resulting percentage to the expenses of the committee. Such expenses shall not exceed for a two year period twenty dollars times the total number of such pupils of the several towns joining in the establishment of such committee. Not later than one month after the beginning of the fiscal year of each town next following the establishment of the committee, each such town shall pay to the treasurer of the committee not less than one-half its proportionate share of the estimated expenses, and not later than one year thereafter, each such town shall pay the remainder of its proportionate share of such estimated expenses. Within the amounts so received the committee may pay its necessary expenses including the compensation of employees, professional consultants and architects. Subject to the approval of the public school building commission, for the purpose of computing any state grant for school building purposes under chapter 77 of the general statutes, and number 6 of the public acts of the special session of November, 1949, as amended, any part of such monies paid to an architect for professional services shall be applied to the total cost of any school building which may be constructed. Any unencumbered balance remaining in the treasury of the committee at the time such committee shall be dissolved shall be returned to the towns joining in the establishment of the committee in the same proportion as their respective shares were paid to finance the expenses of the committee.

SEC. 6. Any committee established under the provisions of this act shall report to the participating towns at such times and in such manner as the committee shall determine and shall make a final report of its findings concerning the matters specified in section 2 of this act. Such committee shall be dissolved when its work is completed but not later than two years from the date of its establishment unless it shall be continued by vote of the legislative bodies of the participating towns for a period not to exceed two additional years.

SEC. 7. Upon the dissolution of such committee, the original or exact copies of all official records shall be transferred and delivered intact to the town clerks in each of the participant towns for preservation. Upon the establishment of a

regional school district all such records shall be deposited with the secretary of the regional school district.

SEC. 8. Not later than one year after the date on which a committee established under the provisions of section 2 of this act shall make its final report to the towns joining in the establishment of said committee, each of said towns shall, after the site for the school has been recommended, by referendum vote at a general or special town election, act on the following resolution:

RESOLVED: To join with the following named towns..... ....., ..., ..., in the establishment of a regional school district with the school located in the town of ....., for the purpose of providing the necessary facilities and administering grades ..... to ..... of the public schools.

Voting shall be in accordance with the laws applicable to elections in the towns and voting machines or ballots may be used with the following presentation:

Shall the town of ..... join with the following named towns ....., ..., ..., in the establishment of a regional school district for the purpose of providing the necessary facilities and administering grades ..... to ..... of the public schools? YES NO

If a majority of those voting in each town shall be for adoption and the state board of education approves, a regional school district composed of such towns shall be established and the provisions of this act, as to said towns, shall take effect immediately. In the event that the majority vote in one or more of such towns shall be against adoption, any two or more of the towns voting in the first election may proceed in the manner provided in this section to determine whether such towns shall join in the establishment of a regional school district.

SEC. 9. The affairs of the regional school district shall be administered by a regional board of education which shall consist of not fewer than five nor more than nine members as the boards of education of the towns voting to establish such regional school district, at a joint meeting, determine by majority vote; provided each member town shall have at least one representative on such regional board of education said member or members to be elected in a town meeting duly called for the purpose. The regional board, at its first meeting, shall determine, by lot, which members shall serve for one, two or three years, provided the terms of office of not more than fifty per cent of the board shall expire in any one year. Thereafter, terms of office shall be for three years.

Such regional board shall choose, by ballot, from its membership a chairman, a secretary and a treasurer. Such treasurer shall give bond to the regional board to the satisfaction of the members thereof. The cost of such bond shall be borne by the district. The treasurer may, by vote of the board, be compensated for his services.

SEC. 10. Such regional board of education shall, with respect to the regional schools, have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this act. Such board may select and purchase property for school purposes, after approval of the site by the towns in accordance with the provisions of section 8 of this act, and may build, add to, equip and organize a school or schools for the benefit of towns comprising the district and may purchase school busses provided, at a referendum held in the manner provided in section 8 of this act, authority shall be specifically granted for the issuance of bonds or for the inclusion of other grades of the public schools in the regional district.

SEC. 11. Any town adjacent to a regional school district may vote, at a referendum held at any general or special election, to apply for admission to such regional school district, and the regional board of such district may, with the approval of the state board of education, admit such town.

SEC. 12. Each town which joins such district shall pay its proportionate share of the cost of capital outlay and current expenditures necessary in the establishment and operation of a regional school or schools until such costs have been paid in full. The proportionate share of indebtedness and current expenditures of the regional school district to be paid by each town shall be determined by the regional board, provided any town aggrieved by the determination of said board may appeal to the court of common pleas for the county in which the principal office of the regional board is located within thirty days after formal and final notice of such determination is received by such town. Such appeal shall be brought by a complaint, in writing, stating fully the reasons therefor, with a proper citation, signed by competent authority, and shall be served on the secretary of the regional board at least twelve days before the return day. Such appeals shall be brought to the next return day or next but one of said court after the filing of such appeal. Said court shall hear such appeal and examine the question of the legality of the determination appealed from and the propriety and expediency of such determination so far as said court may properly have cognizance of such subject, either by itself or a committee, and shall pro-

ceed thereon in the same manner as upon complaints for equitable relief. Such payments shall be made during each fiscal year on a date or dates fixed by such regional board of education and shall be pro-rated among the towns comprising such district on the basis of the average daily membership of such regional school or schools from each of such towns during the preceding school year, provided, until such school or schools have been in operation for one year, such prorating shall be based on the average daily membership of pupils in like grades from each of such towns at any school during the preceding school year.

SEC. 13. A regional district may provide adult education for the towns in the district, the cost of which shall be prorated among the towns on a per capita basis of each adult student attending from each town.

SEC. 14. All provisions of the general statutes relating to public education, including those providing state grants in aid, shall apply to each town belonging to a regional school district provided, in the event the board of education of any regional school district shall provide transportation to a regional school, such district shall be reimbursed by the state as provided in section 15 of this act.

SEC. 15. Any town or regional school district which transports pupils to a regional school shall be reimbursed by the state for one-half the amount paid for such transportation. At the close of each school year any regional or town board of education which provides transportation to a regional school shall file an application for such reimbursement on a form to be provided by the state board of education. Payments shall be made as soon as possible after the close of each fiscal year.

SEC. 16. No pupil from any town belonging to a regional school district shall, at the expense of such town, attend any other school in lieu of that provided by said district except a vocational school approved by the state board of education, unless his attendance at such other school is approved by the regional board of education.

SEC. 17. Such regional school district shall be a body politic and corporate with power, after approval by referendum vote in the district, to issue bonds in the name and upon the full faith and credit of such district and of the towns comprising the same, in an amount not to exceed the sum deemed necessary to be used by such district in acquiring lands, preparing sites, erecting buildings and purchasing and installing equipment for a regional school or schools. Such bonds shall be denominated "Bonds of regional school district number ..... of the State of Connecticut." The number of each district shall

be in accordance with the order of the incorporation of the districts. Such bonds shall be serial bonds, with coupons attached, and registerable as to principal and interest or as to principal alone, shall be signed by the chairman and the treasurer of the regional board of education and shall bear such rate of interest, mature in such substantially equal instalments and be issued in such denominations and at such time or times and place or places as shall be determined by such district, provided the whole amount shall be paid not later than twenty years from the date of issue in accordance with section 804 of the general statutes, as amended. Such bonds when executed, issued and delivered, shall be obligatory upon such district and upon the towns comprising the same and the inhabitants thereof, according to their tenor and purport.

SEC. 18. The provisions of section 87a of the 1949 supplement to the general statutes and of number 7 of the public acts of the special session of November, 1949, relating to the limitation of indebtedness shall not apply in the case of any bonds issued under the provisions of section 17 of this act. If the district is established for the sole purpose of maintaining a high school, the number of teachers in such high school shall not be counted with those employed by the local board of education of the town in which the school is located in determining the eligibility of such towns for state supervisory service under the provisions of section 1444 of the general statutes. If the regional school district operates an elementary school for pupils living in more than one town, the number of teachers employed in such school shall be pro-rated to the respective towns in proportion to the average daily membership in the school for the purposes of determining the eligibility of such towns for state supervisory service under the provisions of section 1444 of the general statutes.

SEC. 19. The board of education of any regional district shall have the power to invest the proceeds of bond issues in the same manner and to the same extent as that vested in the treasurer of any municipality by section 88a of the 1949 supplement of the general statutes.

SEC. 20. The fiscal year shall be determined by the regional board. Annually at least sixty days prior to the annual meeting of said board, a public budget meeting shall be held in the district, notice of which shall be conspicuously posted and published at least ten days prior to such meeting, at which the annual budget of the regional school district shall be presented, provided the time for the first such public meeting, if it be for the presentation of a budget for a period of less than one year, may be fixed by said board at any time at least

one month prior to the beginning of the period covered by such budget, and such board shall hear all persons who may wish to be heard in regard to any item in such budget. At the time of giving notice of such public meeting, the regional board of education shall make available to any elector in the regional school district at the administrative offices of such board copies of the proposed budget in a form and having a classification of expenditures as prescribed by the state board of education. Said budget shall consist of the following: (1) A budget message outlining the financial policy of the regional school district and describing in connection therewith the important features of the budget plan; (2) estimates of revenue, presenting in parallel columns the itemized receipts collected in the last completed fiscal year, the receipts collected during the current fiscal year to the time of preparing the estimates, the receipts estimated to be collected during the remainder of the current fiscal year, and estimates of the receipts, other than from payments from the towns comprising such regional district, to be collected during the ensuing fiscal year; (3) itemized estimates of expenditures, presenting in parallel columns the actual expenditures of such district for the last-completed fiscal year and for the current fiscal year to the time of preparing the estimates, the expenditures as estimated for the remainder of the current fiscal year and the estimated expenditures to carry out the educational program during the ensuing year; (4) the estimated per pupil expenditure for the ensuing school year; and (5) such other information as, in the opinion of the regional board of education, will contribute to the intelligent consideration of the budget at such public meeting. Within ten days after holding such public meeting the board shall meet to consider the budget estimates as presented and any other matters brought to its attention and shall adopt a budget for the ensuing fiscal year. At the time when the regional board shall adopt a budget, it shall estimate the amount which each town comprising such regional district shall pay to the regional district under the provisions of section 12 of this act. Thereupon the board shall prepare and cause to be published in a newspaper in those towns comprising the regional school district, if there be any, otherwise in a newspaper or newspapers having a circulation in such towns, a statement of the proposed budget in the form prescribed for the presentation of the budget at the public meeting.

SEC. 21. In addition to the power to issue bonds as provided by section 17 of this act, such regional board of education shall have the power, when deemed necessary, to borrow sums

of money in an amount not to exceed in the aggregate fifty thousand dollars for a period not to exceed five years and pay interest thereon for acquiring lands, for the operation and maintenance of a regional school or schools, for the installation of equipment for the same and for contingent and other necessary expenses connected therewith. Such loan or loans shall be in the name of, and upon the full faith and credit of, said district, of the towns comprising the same and the inhabitants thereof. The note or notes evidencing such loan shall be signed by the chairman and treasurer of the regional board of education.

SEC. 22. Any town which is a member of a regional school district, by vote of a town meeting duly warned and held for the purpose, may apply to the regional board to withdraw from such regional school district. Upon receipt of such application, the regional board shall request each town in such district to hold a special town meeting to permit such town to withdraw. The ballots for such vote shall be marked "YES" or "NO". In the event that a majority of the total vote cast in the district shall provide for withdrawal of such town, such withdrawal shall be permited provided such withdrawal shall not operate to impair the obligation of the withdrawing town or the district to the holders of any bonds which may have been issued under authority of part III chapter 67 of the general statutes or this act prior to its withdrawal.

SEC. 23. The regional board and the withdrawing town and the remaining towns may make agreements for the payments of money to or from the district and the towns for the purpose of adjusting any inequities resulting from said withdrawal.

SEC. 24. Any two or more towns which are members of a regional school district, may, pursuant to a vote of their legislative bodies, make application to the regional board of education for a special election to be held in all of the towns in such district for the purpose of voting upon the dissolution of such district. Upon receipt of such application, the regional board shall direct each town in such district to hold a special town meeting on an appointed day within sixty days thereafter. All ballots in such elections shall be counted in one place within the district, as determined by the regional board, and, upon approval of such dissolution by a majority of those voting upon the question, such district shall be dissolved subject to the provisions of sections 25 and 26 of this act. The ballots used at such elections shall be as follows:

RESOLVED THAT: Regional school district No. ..... shall be dissolved ..... YES....
NO

Addendum

SEC. 25. A regional school district shall not be dissolved until all outstanding indebtedness contracted for by such district is paid and any and all outstanding bonded indebtedness is paid or the payment thereof is provided for.

SEC. 26. If a majority of the voters of the district vote to dissolve the district, the members of the regional board of education and their successors shall continue to function as such board for the sole purpose of winding up the affairs of the district.

SEC. 27. Part III of chapter 67 and section 1575 of the general statutes are repealed.

SEC. 28. This act shall take effect from its passage.

Approved July 10, 1951.

Addendum

SPECIAL ACT NO. 74-69

Substitute House Bill No. 5758

SPECIAL ACT NO. 74-69

AN ACT CONCERNING ELECTION OF MEMBERS OF THE BOARD OF REGIONAL HIGH SCHOOL DISTRICT NUMBER FIVE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Notwithstanding the provisions of section 10-46 of the general statutes, with respect to the election of members of regional boards of education, each town in regional high school district number five shall elect one member each year at the annual town meeting of such towns, or at a special town meeting held for the purpose, to serve for a term of three years to commence on the first day of July following such election.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1974.

_____

Governor.

Addendum

File No. 401

Substitute House Bill No. 5758

State of Connecticut

House of Representatives

House of Representatives, April 22, 1974. The Committee on Government Administration & Policy reported through Rep. Pugliese of the 22nd District, Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ELECTION OF MEMBERS OF THE BOARD OF REGIONAL HIGH SCHOOL DISTRICT NUMBER FIVE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Notwithstanding the provisions of section 10-46 of the general statutes, with respect to the election of members of regional boards of education, each town in regional high school district number five shall elect one member each year at the annual town meeting or such towns, or at a special town meeting held for the purpose, to serve for a term of three years to commence on the first day of July following such election.

Addendum

STATE OF CONNECTICUT

Raised Committee Bill No. 5738 Page 1

Referred to Committee on Government Administration & Elections

LCO No. 1623

Introduced by (GAP)

General Assembly,

February Session, A.D., 1974

AN ACT CONCERNING ELECTION OF MEMBERS OF THE BOARD OF REGIONAL HIGH SCHOOL DISTRICT NUMBER FIVE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Notwithstanding the provision of section 10-46 of the general statutes, with respect to the election of members of the board of regional high school district number five, each town in said district shall elect one member each year at the annual town meeting of such towns, or at a special town meeting held for the purpose, to serve for a term of three years to commence on the first day of July following such election.

STATEMENT OF PURPOSE: To provide for a uniform date for members of regional high school district number five to take office.

[Proposed deletions are enclosed in brackets and proposed additions are all capitalized, or underlined where appropriate.]

Addendum

PARTIAL LIST OF POWERS AND DUTIES OF BOARDS OF EDUCATION IN CONNECTICUT

POWER OR DUTY	GENERAL STATUTES §
Maintain good public elementary and secondary schools, implement the educational interests of the state, and provide such other educational activities as in its judgment will best serve the interests of the town.	10-220
Have charge of the schools in the town.	10-220
Make continuous study of the needs for school facilities and of long-term building projects and make recommendations to the town in this regard.	10-220
Have the care, maintenance and operation of the buildings, lands, apparatus and other properties used for school purposes.	10-220
Determine the number, age and qualifications of the pupils to be admitted into each school.	10-220
Employ and dismiss the teachers of the schools subject to the provisions of applicable statutes.	10-220
Designate the schools which will be attended by the various children within the several towns.	10-220
Make such provisions as will enable each child of school age residing in the town of suitable mental and physical condition to attend some public day school for the period required by law.	10-220
Provide for the transportation of children wherever transportation is reasonable and desirable, and for such purpose make contracts	

Addendum

POWER OR DUTY	GENERAL STATUTES §
covering periods of not more than five years.	10-220
Arrange with the board of education of an adjacent town for the instruction therein of such children as can attend school in such adjacent town more conveniently.	10-220
Cause each child between the ages of seven and sixteen living in the town to attend school.	10-220
Secure educational opportunities in another town in accordance with the provisions of the statutes and give all children of the town as nearly equal advantages as may be practicable.	10-220
Perform all acts required of it by the town or necessary to carry into effect the powers and duties imposed upon it by law.	10-220
Prescribe rules for management, studies, classification and discipline of public schools and, subject to the state board of education, the textbooks to be used.	10-221
Make rules for the arrangement, use and safekeeping within its jurisdiction of school libraries and approve books selected therefor.	10-221
Approve plans for schoolhouses and superintend any high or grade school.	10-221
Prepare itemized estimate of cost of maintenance of public schools for ensuing year.	10-222
Expend any monies appropriated by the legislative body of the town at its own discretion.	10-222
Transfer unexpended or uncontracted-for portion of appropriations for school purposes to any other item of its itemized estimate.	10-222

Addendum

POWER OR DUTY	GENERAL STATUTES §
Expel from school any pupil regardless of age who after a full hearing is found guilty of conduct inimical to the best interests of the school.	10-234
Protect employees from financial loss which might arise from suit or claim for damages alleging negligence.	10-235
Establish and maintain a school activity fund to finance the portion of school lunches not provided by the town or to finance part of the cost of driver education courses not provided by the town or to provide for funds of schools and school organizations as it determines.	10-237
Contract with a federal governmental agency for funds to establish a demonstration scholarship program for a period of up to five years.	10-239c
Ascertain the name and age of each child under twenty-one years who resides in town on April 1.	10-249
Pay for transportation of high school students.	10-277
Establish and maintain a program of adult education for at least 150 clock hours per year in towns of 10,000 or more (permissible but not mandatory for towns of less than 10,000 population).	10-69
Establish and maintain summer courses and charge therefor.	10-74a
Identify children requiring special education and provide professional services therefor.	10-75b
Require each child to be vaccinated for smallpox and measles before attending public school.	10-204

Addendum

POWER OR DUTY	GENERAL STATUTES §
Require vaccination for poliomyelitis for each child before attending public school.	10-204a
Appoint (mandatory for towns with over 10,000 population) one or more qualified medical advisors and provide adequate facilities for privacy during health exams and prescribe his functions and duties.	10-205
Require pupil physical examinations once every three years for physical well-being.	10-206
Establish and operate lunch services for school children and employees and charge therefor.	10-215

Court Press Form No. 2-Affidavit.
H.15

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN E. BAKER and GERALDINE S. GEORGE,

Plaintiff-Appellees,

vs.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, ET AL.,

Defendants-Appellants,

MARION P. CROCCO, GEORGE P. DAVIS, JR., ET AL.,

Defendants.

State of New York,
County of New York,
City of New York—ss.:

IRVING LIGHTMAN being duly sworn, deposes and says that he is over the age of 18 years. That on the 10th day of April, 1975, he served two copies of the Brief of Plaintiffs-Appellees on the attorneys for the parties to the appeal See attached list by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said attorneys at See attached list ( ), that being the address designated by them for that purpose upon the preceding papers in this action.

Irving Lightman

Sworn to before me this
10th day of April, 1975.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1976

COUNSEL TO WHOM SERVICE COPIES OF BRIEF MUST BE SENT

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